

ROUTINE PROGRAM CHANGE ANALYSIS
INCORPORATION OF “INTEGRATED ECOSYSTEM RESTORATION:
LOUISIANA’S MASTER PLAN FOR A SUSTAINABLE COAST,” GOVERNOR
BOBBY JINDAL EXECUTIVE ORDER BJ-08-07, AND IMPLEMENTATION
GUIDANCE INTO THE STATE COASTAL PROGRAM

INTRODUCTION

Throughout the history of Louisiana’s Coastal Resources Program (LCRP), it has been recognized that the loss of coastal wetlands was a national crisis. The USGS has projected that land loss from the period 1956 through 2050 would be 2,038 square miles from the combined effects of subsidence, sea level rise, sediment deprivations, hurricanes and human activities. To address this issue Louisiana has developed a long-term ecosystem restoration and protection strategy of which the enforceable policies and mechanisms of the LCRP will be a significant component. This Program Change proposes to incorporate four (4) interrelated policy and guidance documents into the LCRP to facilitate master plan implementation.

NATURE OF PROGRAM CHANGE

The proposed program change would incorporate the four (4) items listed and described below into the LCRP in order to utilize fully the existing and new enforceable policies and mechanisms of the State and Local Coastal Resources Management Act, (SLCRMA) through which the Office of Coastal Management (OCM) implements the LCRP. The executive order adds an enforceable policy to the LCRP that focuses and clarifies the role of the state agencies in implementing the Master Plan. Together, these documents form the basis of OCM’s use of its authorities in facilitating the implementation of the state Master Plan.

- 1) “ Integrated Ecosystem Restoration: Louisiana’s Comprehensive Master Plan for a Sustainable Coast”(2007) (Master Plan). This document is a broad and general statement of guiding principles , goals and strategies proposed to be used in a decades long effort to protect and restore, when possible, Louisiana’s coastal ecosystem to a sustainable level. The Master Plan identifies and describes ecosystem restoration and hurricane protection measures denotes their location on maps. It also describes such non-structural measures as building code requirements, elevation requirements, planning and zoning regulations and incentives, and beneficial use of dredged material for restoration and protection and identifies appropriate areas where these should be considered.
- 2) Senate Concurrent Resolution 11 of the 2007 Regular Session of the Louisiana Legislature. This resolution approves the Master Plan by the Louisiana Legislature and expresses the legislative intent that the Coastal Protection and Restoration Authority (CPRA) should move forward in implementing provisions of the plan.

- 3) Executive Order BJ-08-07, (2008). This executive order (EO) This EO directs all state agencies to carry out their regulatory responsibilities and administer all programs, contracts, grants and other activities in a manner consistent with the Master Plan. All state agency actions should take into account Master Plan features and other non-structural programs and be implemented in a manner which does not adversely affect any Master Plan action.
- 4) “Guidance for Permit Consistency with Louisiana’s Master Plan for a Sustainable Coast” (2009). This guidance document was developed by OCM as a §309 work product to provide a consistent methodology for OCM staff to apply the enforceable policies and mechanisms of the LCRP to the regulatory and oversight responsibilities in such a way as to fully comply with EO BJ-08-7, as described above. This document also establishes a framework for coordination in the coastal use permitting process whereby OCM permit staff coordinate proposed coastal uses with staff of the Office of Coastal Protection and Restoration based on the nature of the proposed use, its magnitude of anticipated effects and its location with respect to Master Plan features.

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DESCRIPTION OF CHANGES

The issuance of the executive order requiring state agencies to conduct their activities in a manner consistent with the Master Plan changes the way that OCM reviews coastal use permits. Now, in addition to evaluating proposed coastal uses in terms of the coastal use guidelines as further discussed below, OCM permit review staff must review proposed uses in the context of Master Plan features and measures and whether or not the proposed use will affect those features and thus be consistent with the Plan. Further, In order to accomplish this in an orderly and effective manner, OCM commissioned the preparation of the guidance document. That document provides a framework which considers the nature, magnitude and location of proposed coastal uses and lays out coordination processes, and defines roles and responsibilities of staff at OCM and at the Office of Coastal Protection and Restoration (OCPR) which is the lead agency for implementing the Master Plan. Using the matrix in the guidance the appropriate level of interagency coordination occurs prior to issuance of a coastal use permit or other authorization. Depending on the nature, magnitude and location of a proposed use, the OCM may make a final decision in-house, inquire whether OCRM has comments, or request a review of the proposed use by OCRM prior to a final regulatory decision. Once formally incorporated into the LCRP, this process will be expanded to review of consistency determinations and incorporated into OCM standard operating procedures for the consistency section of OCM.

JUSTIFICATION AND ANALYSIS

Analysis of the content of the above described documents demonstrates that collectively these documents are clarifications of existing enforceable policies and procedures and provide guidance from the governor and state legislature to the OCM as to legislative

intent. And while the content of the Master Plan provides a framework establishing state priorities and objectives in attaining a sustainable coast, this is a change which builds on and refocuses existing public policy and one which will be implemented through use of existing enforceable policies and the new enforceable policies of the executive order as further discussed below.

ANALYSIS OF FIVE PROGRAM CHANGE APPROVAL AREAS.

The State of Louisiana contends that the changes made by the four (4) related documents described above constitute a Routine Program Change rather than an amendment to the LCRP because they do not substantially change any of the five (5) Program Approval Areas listed at 15 CFR Part 913, Subpart H Section 923.80(d), which are as follows: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and (5) coordination, public involvement and national interest. Further explanation is given below, as follows:

First, the Master Plan and associated documents do not change uses subject to management. They do not change existing regulatory authority, but rather clarify, update and provide guidance for applying existing authorities. Neither the Master Plan nor executive order subject any new uses to management. The program already has the authority to regulate wetlands and any other use impacting coastal waters under the SLCRMA and its regulations.

Second, the Master Plan and related documents in no way change the regulatory procedures for special area management.

Third, adoption of the Master Plan and related documents does not result in a change in the coastal zone boundary of Louisiana.

Fourth, the executive order is a new authority by which the state exerts control over land and water uses and enforces policies. This is not, however, a substantial change in authority because the SLCRMA already provides the LCRP with broad authority to regulate wetlands and coastal waters, and the individual components of Master Plan features and measures are already subject to review under existing regulations. The executive order does add an enforceable policy to the LCRP but this does not represent a substantial change. Specifically, the following language in the executive order constitutes a new enforceable policy: All state agencies shall administer regulatory practices, programs, contracts, grants, and all other functions vested in them in a manner consistent with the master plan and public interest to the maximum extent possible. This enforceable policy sets forth a specific requirement for the Office of Coastal Management (OCM) in all of its actions in implementing the LCRP.

The Master Plan itself, and the remaining two related documents do not add any enforceable policies to the LCRP. The changes resulting from the adoption of these documents or actions establish new broad public policy and provide regulatory guidance to OCM for interpreting the Coastal Use Guidelines and other currently existing enforceable policies and mechanisms of the LCRP. It is worth noting at this point that

the very first statement in the SLCRMA declaration of public policy (R.S. 49:214.22) states that it is the policy of Louisiana, through its coastal management program *[t]o protect, develop, and where possible, restore or enhance the resources of the state's coastal zone.*" This is also clearly the purpose of the Master Plan. Implementation of this change will be accomplished using existing authority conveyed by current regulations (especially the Coastal Use Guidelines) which constitute the enforceable policies and mechanisms of the LCRP, by developing internal standard operating procedures for staff, and by education of constituents and stakeholders. Broad authority already exists for the LCRP in existing state law at R.S. 49: 214.32(B), which states: *"The governor, through the secretary, shall ensure that any activity within or outside the coastal zone which affects land or water use or natural resources of the coastal zone which is undertaken, conducted, or supported by any governmental; body is consistent with the state program and any affected approved local program having geographical jurisdiction over the activity to the maximum extent practicable and with respect to federal agencies, to the fullest extent allowed under federal law, particularly 16 USC 1456 and 15 CFR 930.1 – 930.154 and amendments thereto. The governor, through the secretary, shall also ensure that such governmental body has considered any activity in the coastal zone has accounted for potential impacts from hurricanes and other natural disasters."* Thus, this current statutory language already provides the LCRP authority to consider features and activities such as those in the Master Plan on an individual basis at the direction of the governor. The executive order and the Master Plan document are implementing mechanisms for specific coastal uses that the state will now consider. The new enforceable policy is, therefore, not a substantial change to the LCRP but is a refinement in the method of implementing other existing enforceable policies.

By way of further example, existing regulations comprising the Coastal Use Guidelines (Louisiana Administrative Code, Title 43, Chapter 7, Subpart B, Section 701 *et seq.*) provides the performance standards against which decisions of OCM are made regarding its regulatory and other oversight responsibilities. Section 701G provides decision making guidance particularly relevant to review of coastal uses in the context of the Master Plan by providing a list of effects which are to be avoided, to the maximum extent practicable. Particularly notable are: 19. *Land loss, erosion, or subsidence.* 20. *Increases in the potential for flood, hurricane or other storm damage, or increases in the likelihood that damage will occur from such hazards.* 21. *Reduction in the long term productivity of the coastal ecosystem.*

Fifth, incorporation of the Master Plan and related documents into the LCRP does not make substantial changes to coordination, the national interest or federal consistency procedures. Although the Master Plan does relate to coordination and federal consistency, the Master Plan provides additional guidance for implementing public policy under existing enforceable policies, clarifies existing procedures, and updates the existing management program to better conform to the principles of integrated coastal management concepts of ecosystem based management.

CHANGES IN ENFORCEABLE POLICY

Incorporation of the executive order, Master Plan, and related documents, into the LCRP will elaborate and detail public policy already expressed in the SLCRMA at R.S. 49:214.22(1), to address issues of coastal protection, restoration and development in a sustainable manner in coastal Louisiana. The new enforceable policy established by the executive order refines and focuses other existing enforceable policies of the LCRP to facilitate and maximize the effectiveness of the LCRP in helping to implement the Master Plan, as discussed in detail above. The Master Plan and two remaining related documents, do not individually or collectively create new enforceable policies or mechanisms for the LCRP. Rather, the incorporation of the Master Plan into the LCRP will provide an updated context for application of existing enforceable policies and mechanisms which will be applied in a coordinated, ecosystem management context consistent with existing public policy as mandated by the executive order.